

Update: Adoption Proceedings Benchbook

CHAPTER 3

Identifying the Father

3.7 Acknowledgment of Parentage

B. Effect of Acknowledgment

Insert the following text after the November 2003 update to page 95:

An acknowledgment of parentage indicating that a man is the biological father of a child born while the mother was married to another man does not override the presumption that the child is a legitimate issue of the mother's marriage. *Barnes v Jeudevine*, ___ Mich ___, ___ (2006).

In *Barnes*, at the time the subject child was conceived, the defendant-mother (Jeudevine) was married. *Barnes, supra* at ___. Jeudevine did not inform her husband of the pregnancy. *Id.* at ___. Shortly thereafter, Jeudevine's husband, still unaware that Jeudevine was pregnant, filed for divorce. *Id.* at ___. Jeudevine did not respond to the complaint for divorce and did not appear at the divorce hearing. *Id.* at ___. The court entered a default judgment of divorce. Four months after the divorce was final, Jeudevine gave birth to the subject child and identified the plaintiff (Barnes) as the child's father on the child's birth certificate and on an affidavit of parentage signed by both Jeudevine and Barnes. *Id.* at ___. Before ending their relationship, Jeudevine and Barnes lived together and raised the child for more than four years. After their relationship ended, Barnes filed a paternity action against Jeudevine alleging that he was the father of the subject child. *Id.* at ___. The trial court granted summary disposition in Jeudevine's favor, and the Court of Appeals reversed this ruling.

The Michigan Supreme Court reversed and remanded the case for entry of an order of summary disposition in Jeudevine's favor. *Barnes, supra* at ___. In making its ruling, the Court noted that the affidavit of parentage alone was insufficient to give the plaintiff standing to bring an action under MCL 722.711(a) of the Paternity Act. *Id.* at ___. The Court explained:

“It was acknowledged in the affidavit of parentage and in the birth certificate that plaintiff was the biological father of the child. Yet, despite these documents, the child is still presumed to be a legitimate issue of the marriage. An affidavit of parentage is a stipulation by a woman of a man’s paternity under the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.* This is not a court determination that the child was born out of wedlock, as is required under either the Paternity Act or the Acknowledgment of Parentage Act. Both acts provide that a child is born out of wedlock only when (1) the woman was not married at the time of the conception and birth, or (2) a court previously determined that the child was not an issue of the marriage. Further, a birth certificate is also not a court determination that the child was not an issue of the marriage. For these reasons, the affidavit of parentage and the birth certificate do not rebut the presumption that the child was an issue of defendant’s marriage” *Barnes, supra* at ____.

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3.8 The Paternity Act

B. A Child That the “Court Has Determined to Be a Child Born or Conceived During a Marriage but Not the Issue of That Marriage”

Insert the following case summary before the first bullet at the top of page 103:

♦ *Barnes v Jeudevine*, ___ Mich ___ (2006)

“[A] court determination under [the Paternity Act] that a child is not ‘the issue of the marriage’ requires that there be an affirmative finding regarding the child’s paternity in a prior legal proceeding that settled the controversy between the mother and the legal father.” *Barnes v Jeudevine*, ___ Mich ___, ___ (2006). Therefore, a judgment of divorce in which the circuit court fails to make an affirmative finding that the subject child was not the issue of the marriage is insufficient to give a putative father standing to bring an action under MCL 722.711(a) of the Paternity Act. *Barnes*, *supra* at ___.

In *Barnes*, at the time the subject child was conceived, the defendant-mother (Jeudevine) was married. *Barnes*, *supra* at ___. Jeudevine did not inform her husband of the pregnancy. *Id.* at ___. Shortly thereafter, Jeudevine’s husband, still unaware that Jeudevine was pregnant, filed for divorce. *Id.* at ___. Jeudevine did not respond to the complaint for divorce and did not appear at the divorce hearing. *Id.* at ___. The court entered a default judgment of divorce that stated:

“[I]t satisfactorily appears to this Court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed, and there remains no reasonable likelihood that the marriage can be preserved; it further appearing that no children were born of this marriage and none are expected.” *Id.* at ___.

Four months after the divorce was final, Jeudevine gave birth to the subject child and identified the plaintiff (Barnes) as the child’s father on the child’s birth certificate and on an affidavit of parentage signed by both Jeudevine and Barnes. *Barnes*, *supra* at ___. Before ending their relationship, Jeudevine and Barnes lived together and raised the child for more than four years. After their relationship ended, Barnes filed a paternity action against Jeudevine alleging that he was the father of the subject child. *Id.* at ___. After a hearing, the trial court granted summary judgment in favor of Jeudevine, concluding that

Barnes did not have standing to sue under the Paternity Act because there was no prior court determination that the subject child was a child born or conceived during the marriage but not the issue of the marriage. *Id.* at _____. The Court of Appeals reversed, finding that Barnes had standing to bring his action under the Paternity Act because “the statement in the default judgment of divorce that ‘no children were born of this marriage and none are expected’ was a determination by a court that the child was not an issue of the marriage.” *Id.* at _____.

The Michigan Supreme Court reversed and remanded the case for entry of an order of summary disposition in Jeudevine’s favor. *Barnes, supra* at _____. In disposing of the case, the Court first noted that because Jeudevine was married to another man when the subject child was conceived, it was necessary for Barnes to establish that a court had determined that the child was not an issue of the marriage. *Id.* at _____. The Court explained:

“In this case, the subject child is presumed to be the issue of the marriage because the child was conceived during the marriage. The presumption remains until rebutted by clear and convincing evidence to the contrary. Consequently, the party wishing to overcome the presumption must present evidence that the child, despite the date of its conception, is not the issue of the marriage and a court must so hold. The circuit court’s statement in the judgment of divorce that it appeared that there would be no children does not rebut that presumption. Further, the legal father, [Jeudevine’s husband at the time of conception], never renounced the presumption of legitimacy. Because the child was not conceived outside of marriage, and because there is no prior court determination that the child is not an issue of the marriage, we hold that plaintiff does not have standing under the Paternity Act.” *Id.* at _____.

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C. Who May Bring a Paternity Action

2. Father

Add the following text to the text accompanying the first bullet (*Girard v Wagenmaker*), near the top of page 105:

But see *Barnes v Jeudevine*, ___ Mich ___, ___ (2006), where a judgment of divorce in which the circuit court failed to make an affirmative finding that the subject child was not the issue of the marriage was insufficient to give a putative father standing to bring an action under the Paternity Act.

CHAPTER 5

Temporary Placements, Investigation Reports, and the Safe Delivery of Newborns

5.6 Safe Delivery of Newborns Law

B. Responsibilities of the Hospital

1. Mandatory Report of Child Abuse Not Required

Effective July 6, 2006, 2006 PA 264 amended MCL 722.623 to revise the list of individuals who are required to report suspected child abuse or neglect. Replace the paragraph starting at the bottom of page 175 and continuing at the top of page 176 with the following text:

*Formerly the FIA. See MCL 400.226.

MCL 722.623 mandates that if the following individuals have reasonable cause to suspect child abuse or neglect they must report the abuse or neglect to the Department of Human Services*: a physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master's social worker, licensed bachelor's social worker, registered social service technician, social service technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider.